IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 615 of 2006

Date of Decision: 27.9.2007

Smt. Sneh Lata Jain wife of Pawan Jain, Proprietor of M/s Arihant Industries, Ambala Cantt. Ambala, Haryana.

....Appellant.

Versus

Income Tax Officer, Ward No.II, Ambala and another

...Respondents.

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR.

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Akshay Bhan, Advocate for the appellant.

Mr. Yogesh Putney, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

In this appeal by the assessee under Section 260A of the Income Tax Act, 1961 (for short "the Act"), order dated 30.6.2006 of the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") passed in ITA No. 295/Chd/2003 relating to the assessment year 2001-02 has been challenged. The assessee has claimed that the following substantial questions of law arise for consideration of this Court:-

"1. Whether in the facts and circumstances of the case, the action of the authorities below not to consider the interest of FDR's as exempted under

section 80 HHC is legally sustainable in the eyes of law?

2. Whether in facts and circumstances of the case, the action of the authorities below, the impugned orders Annexures A-1 and A-3 are legally sustainable in the eyes of law?"

Briefly, the facts are that the appellant is engaged in the business of export of misc. goods including scientific instruments and electronic goods and had filed its return declaring total income of Rs.1,32,558/- on 27.8.2001. During the assessment year in question, the appellant-assessee had total export sale of Rs.2.14 crores and had loss of Rs.4,44,282/-. The assessee received interest of Rs.7,22,106/- on FDRs of Rs.70,60,863/- and adjusted the same against loss from export business and thereafter claimed deduction under Section 80 HHC of the Act amounting to Rs.2,22,259/-. The Income Tax Officer vide order dated 18.10.2002 made an addition of Rs.3,26,681/- on disallowance of interest paid for non-business purpose and addition of Rs.2,14,354/- on account of trading addition and Rs.90,387/- as disallowance of 1/5th expenditure as claimed by the assessee. The Income Tax Officer disallowing Rs.46,246/- (1/10th) of the telephone expenditure and Rs.27,580/- 1/5th expenditure out of repair and maintenance calculated the net taxable income as Rs.8,67,510/- and initiated penalty proceedings under Section 271 (1)(c) of the Act. The assessee filed an appeal and the CIT (A) partly allowed the appeal vide its order dated 24.2.2003. Feeling not satisfied, the revenue took the matter before the Tribunal and the Tribunal partly allowed the appeal of

the revenue vide its order dated 30.6.2006. Now, the present appeal has been filed by the assessee in this Court.

Mr. Akshay Bhan, learned counsel for the assessee urged that the interest on fixed deposit receipts earned by the assessee is to be adjusted from the losses of the assessee and thereafter deduction under 80 HHC of the Act should be calculated. Learned counsel placed reliance on **Commissioner of Income Tax, Thiruvananthapuram v. Baby Marine Exports, Kollam, [2007] 4 Supreme Court Cases 555** and argued that the provisions of Section 80 HHC of the Act must receive liberal interpretation and object of the Act must be kept in view while interpreting it. He also contended that interest of Rs.7,22,106/- which was earned from fixed deposit receipts was on account of income from business and, therefore, the same was to be included in the profits of the business while calculating deduction under Section 80 HHC of the Act.

We have given our thoughtful consideration to the submissions of the learned counsel for the assessee and do not find merit in the same. The Tribunal while deciding the controversy had placed reliance upon the Apex Court decisions in **Commissioner of Income-tax v. Sterling Foods [1999] 237 ITR 579, Pandian Chemicals Ltd. v. Commissioner of Income Tax, [2003] 262 ITR 278** and also of the jurisdictional High Court in **Liberty Footwear Co. v. Commissioner of Income Tax, [2006] 283 ITR 398** and had concluded that the words “derived from” used in Section 80 HHC of the Act should have a direct nexus between the profits and gains and the industrial undertaking and since the interest of Rs.7,22,106/- which was earned

on fixed deposit receipts which were used as security or collateral security to obtain various loans from the banks i.e. car loan of Rs.7,93,115/-, machinery loan of Rs.1,26,357/-, miscellaneous loan of Rs.31,38,892/- and CC loan of Rs.13,95,990/- could not be construed to have direct nexus with the profits and gains of the industrial undertaking from export business activity and on that basis the same was not taken into account for the purposes of calculation of deduction under Section 80 HHC of the Act.

No illegality or perversity could be shown in the conclusion arrived at by the Tribunal warranting interference by this Court.

We also find that the reliance of the assessee on Baby Marine Exports Kollam's case (supra) does not support and advance the case of the assessee. In the aforesaid pronouncement, the Apex Court had come to the conclusion that the export premium formed part of the export transaction between the assessee and export houses and consequently, the income by way of export premium was profit derived by the assessee from the export. On the basis of the findings of fact recorded by the Tribunal in the present case, the aforesaid decision does not advance the case of the appellant. The questions of law as claimed by the assessee are answered against the assessee.

In view of the above, finding no merit in this appeal, the same is hereby dismissed. No costs.

(AJAY KUMAR MITTAL)
JUDGE

September 27, 2007 **(M.M.KUMAR)**
gbs **JUDGE**